

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

JAMES LAURENT,

Plaintiff,

v.

CIV 11-0721 BB/KBM

L. BURBANK,

Defendant.

ORDER TO FILE A MARTINEZ REPORT

This *pro se* prisoner civil rights matter is before the Court *sua sponte*. The sole remaining defendant, L. Burbank, whose first name remains unidentified, answered and did not file a dispositive motion. *See Doc. 18*. As presiding District Judge Black noted in an earlier opinion,

Plaintiff alleges he was asleep in his prison cell when a “stand up count” was taken. In order to wake him up, Defendant Burbank kicked Plaintiff “with her steel boots,” causing sharp pain and swelling. He reported the incident and was taken to the medical facility. Plaintiff’s grievances were unavailing. Defendant Burbank and her husband, who is a sergeant at the prison, have allegedly harassed Plaintiff since the incident, “giving him threatening and hateful looks.” Plaintiff contends that these actions have violated his constitutional rights, and he seeks damages and certain equitable relief.

Doc. 14 at 2.

Under *Martinez v. Aaron*, 570 F.2d 317, 320 (10th Cir. 1978), this Court may order Defendant to investigate the incident or incidents underlying Plaintiff’s lawsuit and submit a

report of her investigation in order to develop a factual or a legal basis for determining whether a prisoner plaintiff has a meritorious claim. *See, e.g., Gee v. Estes*, 829 F.2d 1005, 1007 (10th Cir. 1987). A *Martinez* Report may be used in a variety of contexts, including motion for summary judgment or *sua sponte* entry of summary judgment. When a *Martinez* Report is used for summary judgment purposes, the *pro se* plaintiff must be afforded an opportunity to present conflicting evidence to controvert the facts set forth in the report. *Hall v. Bellmon*, 935 F.2d 1106, 1109 (10th Cir. 1991).

Wherefore,

IT IS HEREBY ORDERED that Defendant file a *Martinez* Report in accordance with the instructions below:

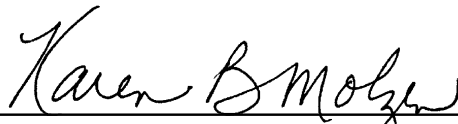
1. Defendant's comprehensive *Martinez* Report shall address all of Plaintiff's allegations and should include, but is not limited to: whether documents or other records pertaining to the events exist; and whether prison policies or regulations address the situation;
2. If documents and records do exist, Defendant shall include copies of them as attachments to the *Martinez* Report. Based on prior experience, the Court feels constrained to request that the attachments be arranged in a logical order. Simply copying jumbled prison records will not suffice. The Court also requests that the attachments be Bates-stamped or otherwise be clearly serially marked;
3. Defendant must provide affidavits to properly authenticate submitted documents, and may also submit other affidavits in support of the *Martinez* Report;
4. The submission of documents alone shall not be considered in compliance with this Order. Defendant is expected to also prepare the "report" portion of the *Martinez* Report that discusses the claims and the submissions that relate to them;
5. The Court is aware that materials contained in corrections files may be sensitive and that there may be valid reasons for keeping such information secret. As such, Defendant may redact confidential portions of documents submitted with the *Martinez* Report and provide that version to Plaintiff.

Alternatively, she may request that Plaintiff not be permitted to review certain portions of the *Martinez* Report and its attachments. If so, Defendant must make their objections to the Court fourteen (14) days prior to the *Martinez* Report filing and service date below. The entire *Martinez* Report must be submitted along with the objections, both under seal, to the Court for ruling;

6. Given the detail required above, the Court will give ample time for Defendant to accomplish this task. Defendant shall file and serve her *Martinez* Report no later than Friday, August 3, 2012;

7. Plaintiff shall file and serve his response to the *Martinez* Report no later than Friday, September 7, 2012; and

8. Defendant shall file and serve her reply, if any, no later than Friday, September 21, 2012.



UNITED STATES CHIEF MAGISTRATE JUDGE